REMARKS

This application has been carefully reviewed in light of the Office Action of November 2, 2006, wherein:

A. Claims 1-4 and 20-22 were rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter;

B. Claims 1-4 and 20-22 were provisionally rejected under 35 USC 101 as claiming the same invention as that of Claims 1-4 and 20-22 of copending Application No. 10/073,483; and

C. Claims 1-4 and 20-22 were rejected under 35 USC 102(e) as being anticipated by US Patent No. 6,195,703 to Blumeneau et al..

Claim Amendments

Claims 1-38 are in the application. Claims 5-19 and 23-45 have been withdrawn by the Examiner as directed to a non-elected species. Claims 1, 3, 20, and 21 are amended in this Response.

A. Rejection under 35 USC 101 (Non-Statutory subject matter)

In sections 1 and 2 of the Office Action, the Examiner rejected Claims 1-4 and 20-22 under 35 USC 101 as being directed to non-statutory subject matter. The Examiner stated that the Applicants should amend the clams by specifying the claim being directed to a practical application and producing a tangible result.

In response to items 1-2 of the Office Action, Claims 1, 3, 20 and 21 have been amended where appropriate to overcome the 35 USC 101 rejection, by reciting a network. The Applicants submit that these amendments specify the claims are directed to a practical application and produce a tangible result.

B. 35 USC 101 (Double Patenting)

In section 3 of the Office Action, the Examiner provisionally rejected Claims 1-4 and 20-22 under 35 USC 101 as claiming the same invention as that of Claims 1-4 and 20-22 of co-pending Application No. 10/073,483. In a telephone conversation between the Examiner and

Sarah Guichard on March 6, 2006, the Examiner noted that Application No. 10/073,483, was listed as abandoned in the PALM system. Additionally, attached as appendix A to this response is Notice of Abandonment for US Application No. 10/073,483 mailed by the USPTO on October 27, 2003. The reason for abandonment is given at the bottom where it states "Applicants have opted to abandon the application through a declaration of abandonment filed on April 7, 2003." Therefore, the Applicants submit that US Application No. 10/073,483 is no longer pending. Since, US Application 10/073,483 is no longer pending, the present application is not claiming the same invention. Thus, the Applicants respectfully request that the Examiner withdraw this statutory double patenting rejection.

C. 35 USC 102(e)

In sections 4 and 5 of the Office Action, the Examiner rejected Claims 1-4 and 20-22 under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,195,703 to Blumeneau et al., hereinafter the "Blumeneau patent."

Claims 1 and 20

Regarding Claims 1 and 20, the Examiner stated that the Blumeneau patent teaches "a system for applying a persistence policy to override allocation of a resource based on application of a load balancing policy comprising: first logic for determining if a persistence policy is applicable to a service request and , if so, allocating a resource to the request based on application of the persistence policy (See col. 1, lines 51-59, in response to a resource request being received at the input of the switch, each resource request is routed to an output of the switch by accessing the routing information in the memory to select a respective output of the switch to which the resource request should be routed); furthermore, [the Blumeneau patent] teaches a second logic for allocating a resource request based on application of a load balancing policy of the persistence policy is determined to be inapplicable as determined by the first logic (See col. 6, lines 6-24). "

As noted in section 706.02 of the MPEP, for anticipation under 35 USC 102, the reference must teach every aspect of the claimed invention. The Applicants submit that the Blumeneau patent does not teach, disclose or suggest each and every element of Claims 1 or 20.

Claim 1 claims, in part, "first logic for determining if a persistence policy is applicable to a service request, ..." and "second logic for allocating a resource based on a load balancing policy... if the persistence policy is determined to be inapplicable as determined by the first logic." Thus, Claim 1 claims both a "persistence policy" and a "load balancing policy." The Blumeneau patent does not teach, disclose, or suggest a "persistence policy."

The Examiner cites col. 1, lines 51-59 of the Blumeneau patent to teach the first logic for determining if a persistence policy is applicable to a service request. The Applicants submit that this portion of Blumeneau patent does not teach a persistence policy. Specifically, col. 1, lines 51-59 of the Blumeneau patent teaches receiving a resource request, and routing the request based on routing information stored in memory. Figure 5 of the Blumeneau patent discloses how the switch control computer is programmed to use the routing table in response to receipt of a data packet from loop port X. Essentially, when a packet from Loop X is received the routing table is accessed to get the next storage port for Loop X to access. After the packet is routed to the next storage port, the list of pointers for is incremented, so that the next incoming packet is routed to the next storage port. Additionally, the Blumeneau patent teaches that the "control computer selects the storage port from the list in a round-robin fashion, as further described below. Alternatively, the switch could select a storage port from the list in a random or pseudo-random fashion." *See* col. 6, lines 35-40 of the Blumeneau patent. The Applicants submit that the round-robin scheduling policy of the Blumeneau patent is not the same thing as a persistence policy, which is claimed in Claim 1. As explained on page 21 of the present application, "[p]ersistence attempts to force the client request to the server that handled the last request from the same client." Since the routing table of the Blumeneau patent is changed with each packet received, the round robin scheduling policy of the Blumeneau patent is not a persistence policy as claimed in Claim 1.

Claim 20 claims, in part, "determining if a persistence policy is applicable to a service request, and, if so, allocating a resource to the request based on the persistence policy." For the reasons stated above, the Applicants submit that the Blumeneau patent does not teach, disclose, or suggest "a persistence policy." Since the Blumeneau patent does not disclose each and every element of Claim 20, the Applicants submit that the Blumeneau patent does not anticipate Claim 20.

Claim 2

Claim 2 is dependent upon Claim 1; therefore, Claim 2 is patentable at least due to its dependence upon an allowable base claim. Furthermore, Claim 2 is patentable over the Blumeneau patent.

Claim 2 claims, in part, "wherein the first logic determines if a persistence policy is applicable ... through consideration of whether or not an allocation exists or recently expired for the originator of the service request."

In rejecting Claim 2, the Examiner cited col. 6, lines 6-24 of the Blumeneau patent. In rejecting Claim 1, the Examiner cited the same section of the Blumeneau patent to teach the allocation of resources based on the application of a load balancing policy. However, in rejecting Claim 2, the Examiner appears to be using this same language to teach the allocation of resources based on the application of the persistence policy. The Applicants assert that the load balancing policy and the persistence policy of Claim 2 are two separate policies. Thus, the Applicants submit that Claim 2 is patentable over the Blumeneau patent.

Claims 3 and 21

Regarding Claims 3 and 21, the Examiner stated the Blumeneau patent teaches "a system for allocating a resource to a resource request having an originator based on application of a persistence policy comprising: first logic for determining whether an allocation exists or recently expired for the originator of the resource request, and, if so, identifying the resource which is the subject of the existing or recently expired allocation (See col. 6, lines 2-24, if a data packet from a loop is blocked by a busy storage port, the dynamic balancing process may be performed to change the routine characteristics for data packets received from the loop so as to possibly provide a free path when the blocked data packet is retransmitted); and a second logic for allocating the resource, once identified, to the resource request (See 6, lines 20-24).

As noted in section 706.02 of the MPEP, for anticipation under 34 USC 102, the reference must teach every aspect of the claimed invention. The Applicants submit that the Blumeneau patent does not teach, disclose or suggest each and every element of Claims 3 or 21.

As previously stated, the Blumeneau patent does not teach, disclose, or suggest a "persistence policy." Further, the Blumeneau patent does not teach, disclose, or suggest "determining whether an allocation exists or recently expired for the originator of the resource request," as is claimed in Claim 3. As explained in col. 5, lines 39-57, the Blumeneau patent teaches that the 32-port switch simultaneously connects any one of sixteen storage ports with any one of sixteen loops. Further, each of the sixteen loops has loop ports of up to fifty hosts. This configuration allows for any of the hosts to access any of the storage ports. Thus, any host (i.e. originator) can cause any storage port to be busy.

Col. 6, lines 2-24 of the Blumeneau patent discloses dynamically load balancing the switch based on a busy port. There is no mention in this portion of the Blumeneau patent that previous requests by the originator are tracked, known, or considered, thus the Blumeneau patent does not teach, disclose, or suggest "determining whether an allocation exists ... for the originator of the resource request," as is claimed in Claim 3. All that is disclosed in col. 6, lines 2-24 is that if a data packet from a loop is blocked by a busy port, the routing characteristics are changed so when the data packet is re-transmitted, it will not go to the same busy port. Since all loops can access all storage ports, all that matters is that the storage port is busy, not which originator is currently accessing the port. Further, since the cited portion of the Blumeneau patent discloses a change is made when a port is busy, the cited portion of the Blumenenau patent does not teach, disclose, or suggest "determining whether an allocation ... recently expired for the originator of the resource request," since if the allocation had recently expired, the port would not be busy. Therefore, the Applicants submit that the cited portions of the Blumeneau patent do not teach, disclose, or suggest "determining whether an allocation exists or recently expired for the originator of the resource request."

Claim 21 claims, in part, "determining whether an allocation exists or recently expired for the originator of the resource request, and, if so, identify the resource which is the subject of the existing or recently expired allocation; and allocating the resource, once identified, to the resource request."

As previously stated with respect to Claim 3, the Blumeneau patent does not teach, disclose, or suggest "determining whether an allocation exists or recently expired for the originator of the resource request." Thus, Claim 21 is patentable over the Blumeneau patent for the same reasons given above for Claim 3.

Claims 4 and 22

Claim 4 is dependent upon Claim 3 and Claim 22 is dependent upon Claim 21; therefore, Claims 4 and 22 are patentable at least due to their dependence upon an allowable base claim.

Concluding Remarks:

For all the foregoing reasons, reconsideration of and withdrawal of all outstanding rejections is respectfully requested. The Examiner is earnestly solicited to allow all claims, and pass this application to issuance.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 08-3038. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed. The petition fee due in connection therewith may be charged to deposit account no. **08-3038**, referencing Howrey Docket No. **02453.0003.CNUS01**.

To expedite allowance of this case, the Examiner is earnestly invited to call the undersigned at (949) 721-6900.

Respectfully submitted,

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